

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

UNITY TELEPHONE COMPANY

d/b/a/ UNITEL, INC.

**Petition for Waiver of the Section 54.904(d)
Interstate Common Line Support
Self-Certification Filing Deadline**

CC Docket No. 96-45

TO: Chief, Wireline Competition Bureau

REPLY COMMENT OF UNITY TELEPHONE COMPANY d/b/a UNITEL, INC.

Pursuant to the Public Notice issued by the Federal Communications Commission ("Commission") on April 15, 2005,¹ Unity Telephone Company d/b/a UniTel, Inc. ("UniTel" or the "Company") hereby submits these brief reply comments in support of its February 17, 2005 Petition for Expedited Waiver (the "Petition"), to the extent necessary, of Section 54.904(d) of the Commission's rules to reflect acceptance of UniTel's May 28, 2004 Interstate Common Line Support ("ICLS") self-certification effective June 30, 2004 (the "2004 Certification").² For the reasons stated herein and its Petition, UniTel respectfully submits that prompt action granting its Petition will advance accepted universal service goals and objectives as well as fundamental notions of administrative fairness and efficiency associated with uncontested requests for Commission action.

¹ See Public Notice, *Wireline Competition Bureau Seeks Comment on Petitions Requesting Waiver of Various Filing Deadlines Related to the Universal Service Program*, CC Docket No. 96-45, DA 05-1094, released April 15, 2005.

² See 47 C.F.R. §§54.904(a) and (d).

As the Commission's records will reflect, no party -- even the net contributors to the federal Universal Service Fund ("USF") -- challenged the extensive factual, public policy and legal demonstrations that UniTel presented in its Petition. The lack of comment is consistent with UniTel's assertion that a grant of the instant Petition would have no impact whatsoever on the level of federal USF because its ICLS estimated recovery has already been reflected in the ICLS sizing for year ending June 30, 2005. *Accord* Petition at 8.

Moreover, and as has been demonstrated by UniTel, no new or novel legal issue is raised by its reliance on the U.S. mail for the delivery of the 2004 Certification. The Commission has already deemed such reliance entirely reasonable when, like here, a sworn statement corroborates that the document was sent. *See id.* at 7 citing *Communications Vending Corporation of Arizona, Inc., et al. v. Citizens Communications Company f/k/a Citizens Utilities Company and Citizens Telecommunications Company d/b/a Citizens Telecom, et al.*, *Memorandum Opinion and Order*, File Nos. EB-02-MD-018-030, FCC 02-314, 17 FCC Rcd 24201, 24229 (2002). UniTel has demonstrated amply the underlying facts and circumstances related to its mailing of the 2004 ICLS Certification, including uncontroverted corroborating evidence that a copy of the document was facsimiled to a third party -- the National Exchange Carrier Association, Inc. -- on the date that the 2004 Certification was mailed to the Commission and the Universal Service Administrative Company, Inc. ("USAC"). *See, e.g., id.* at 2-3.

When compared to the significant interstate cost recovery shortfall that has been experienced by UniTel³ and the effect such shortfall has on the provision of universal service

³ UniTel's ICLS per-line recovery is significant. In 2004, that recovery was \$86.46 annually per-line or

within the certificated rural service areas of Maine within which UniTel operates, no one can contest that prompt action granting the Petition is warranted. USAC has now accepted UniTel's resubmission of its 2004 Certification as being received in late December 2004, thereby allowing UniTel to begin receiving ICLS disbursements effective April 1, 2005.⁴ Thus, action on this Petition is currently required only for the July 1, 2004 through March 31, 2005, 9-month period.

Accordingly, UniTel respectfully submits that it has demonstrated "good cause"⁵ for its request. The instant situation demands the Commission's prompt exercise of its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest,⁶ particularly with the hardship that would befall UniTel and the fact that the equities and more effective implementation of the Commission's overall universal service goals and objectives would be met through a prompt grant of the Petition.⁷

\$7.21 per-line, per-month. See Petition at 6. Moreover, UniTel has demonstrated that, absent a grant of this Petition, no interstate recovery for UniTel's loop plant will be provided for that portion of the 2004 certification year that ICLS is not disbursed to it. See *id.*

⁴ Accord *In the matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, 16 FCC Rcd 19613, 19688 (¶176) (2001)*(Where an ICLS certification is filed untimely, "the carrier will not become eligible for support until the second calendar quarter after the certification is filed" (footnote omitted)).

⁵ 47 C.F.R. §1.3.

⁶ See Petition at 5 citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (DC Cir. 1990) ("*Northeast Cellular*").

⁷ See *id.* at 5 citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (DC Cir. 1969); *Northeast Cellular* at 1166; see also *id.* at 9.

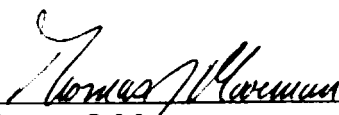
For the reasons stated in its Petition and herein, therefore, UniTel respectfully requests the Commission to grant expeditiously UniTel's Petition, and notify USAC promptly so that UniTel's future settlements, ICLS disbursements, and USAC's calculations can be corrected as soon as possible and to the extent necessary. Grant of this request will enable UniTel to receive ICLS disbursements for the *full* 12 month period covered by the 2004 Certification. Such action is not only consistent with the statutory goal of preserving and advancing universal service for the rural customers served by UniTel but also consistent with the public interest.

Accordingly, UniTel respectfully requests that the Commission grant this request promptly, and accept UniTel's 2004 Certification effective June 30, 2004.

Respectfully submitted,

Unity Telephone Company d/b/a UniTel, Inc.

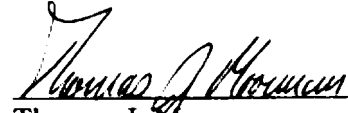
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May 6, 2005

Certificate of Service

I, Thomas J. Moorman, do hereby certify that on this 6th day of May, 2006, copies of the foregoing "Reply Comments of Unity Telephone Company d/b/a UniTel, Inc." were served, as noted, upon the individuals noted below.


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